



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/904,079	07/12/2001	Jerry F. Coday	53625	1857

27148 7590 06/03/2004

POLSINELLI SHALTON & WELTE, P.C.  
700 W. 47TH STREET  
SUITE 1000  
KANSAS CITY, MO 64112-1802

EXAMINER

SINGH, SUNIL

ART UNIT	PAPER NUMBER
----------	--------------

3673

DATE MAILED: 06/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/904,079

Applicant(s)

CODAY ET AL.

Examiner

Sunil Singh

Art Unit

3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19, 21, 28 and 29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-4 and 28 is/are allowed.
- 6) ☒ Claim(s) 5-19, 21 and 29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## DETAILED ACTION

### *Specification*

1. The disclosure is objected to because of the following informalities: because reference character "32" has been used to designate both screw collar and drophead (See page 17). \* Appropriate correction is required.

### *Claim Objections*

2. Claim 8 is objected to because of the following informalities: claim 8 line 4, "said aligned holes of **said projections**" is recited and antecedent basis for such language is provided in claim 6; therefore, it appears that claim 8 should be dependent from claim 6. Appropriate correction is required. **The examiner is treating claim 8 as if it were dependent from claim 6.**

### *Claim Rejections - 35 USC § 112*

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claim 29 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 29 duplicates what was recited in claim 21 and therefore should be canceled.

### *Claim Rejections - 35 USC § 103*

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

Art Unit: 3673

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 5,13-15, 17, 21 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnston '708 in view of brochures "TITAN Formwork Systems" or "Etobicoke Iron Works Limited Corporate Profile".

7. Johnston discloses a post shore and decking system comprising a post shore that includes a non-symmetrical main leg (see Figs. 10,12). Johnston discloses the invention substantially as claimed. However, Johnston lacks the specific drophead, ledger and joist as called for in the claims. "TITAN Formwork Systems" and "Etobicoke Iron Works Limited Corporate Profile" both teach the specific drophead, ledger and joist as called for in the claims. It would have been considered obvious to one of ordinary skill in the art to modify Johnston by substituting the drophead, ledger and joist as taught by either "TITAN Formwork Systems" or "Etobicoke Iron Works Limited Corporate Profile" for the drophead, ledger and joist as disclosed by Johnston since such a modification provides interlocking members thus eliminating cutting or lapping as is traditionally required.

With regards to claim 17, a removable screw collar (see Fig. 1).

8. Claims 6-12, 16 and 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnston '708 in view of brochures "TITAN Formwork Systems" or "Etobicoke Iron Works Limited Corporate Profile".as applied to claim 5 above, and further in view of Johnston '708.

**See attached marked up Figures 10 and 12, (shown in right hatched marked, what the "channel" is considered as with regards to claims 6-8,11,16,18,19).**

Johnston (once modified) discloses the invention substantially as claimed. However, the (once modified) Johnston lacks a plurality of aligned holes passing through the flat projections. Johnston teaches a plurality of aligned holes passing through flat projections (see Figs. 2,3,7). It would have been considered obvious to one skilled in the art to further modify the (once modified) Johnston (referring to Johnston Figs. 10,12) to include a plurality of aligned holes passing through the flat projections as taught by Johnston (see Figs. 2,3,7) since such an arrangement allows for easy connection of brace members.

With regards to claim 7, Johnston (twice modified) discloses the invention substantially as claimed. However, the (twice modified) Johnston lacks a plurality of holes passing through the front wall of the channel. Johnston teaches a plurality of holes passing through the front wall of the channel (see Fig. 6). It would have been considered obvious to one skilled in the art to further modify the (twice modified) Johnston to include a plurality of holes passing through the front wall of the channel as taught by Johnston (see Fig. 6) since such an arrangement allows for easy connection of brace members.

With regards to claim 8, the extension leg member with holes is depicted in Figure 1 of Johnston as member (33).

Art Unit: 3673

With regards to claim 11, the channel includes means for holding a nut on the inside wall of the channel (see Fig. 10,12 of Johnston).

With regards to claim 16, frame members are attached to the channel member.

With regards to claim 18, a screw connects the frame member with the channel (see Figs. 10,12).

With regards to claim 19 (see Fig. 6).

**See attached marked up Figures 10 and 12, (shown in left hatched marked, what the "channel" is considered as with regards to claims 9,10,12).**

With regards to claim 9, Johnston (see Figs.10,12) (once modified) discloses the invention substantially as claimed. However, the (once modified) Johnston (see Figs. 10,12) lacks an outside leg slideably received by a main leg. Johnston teaches an outside leg slideably received by a main leg (see Fig. 8). It would have been considered obvious to one skilled in the art to further modify the (once modified) Johnston (see Figs. 10,12) to include an outside leg slideably received by the main leg as taught by Johnston (see Fig. 8) since such an arrangement allows for easy connection of brace members.

With regards to claim 10, the outside leg has a plurality of holes passing there through (see Fig. 8 of Johnston)

With regards to claim 12, the outside leg includes means for receiving and holding a nut (see Fig. 8).

Art Unit: 3673

9. Claims 5, 13, 14, 15, 17, 21 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over brochure Etobicoke Iron Works Limited Corporate Profile in view of Etobicoke Iron Works Limited Corporate Profile or "TITAN Formwork Systems" Etobicoke Iron Works Limited Corporate Profile discloses a non-symmetrical leg (see page with heading "Components of 20K Frame system). However, Etobicoke Iron Works Limited Corporate Profile lacks the specific drophead, ledger and joist as called for in the claims. "Etobicoke Iron Works Limited Corporate Profile" and "TITAN Formwork Systems" both teach the specific drophead, ledger and joist as called for in the claims (see page with heading "Megashore Capacity Char", "Pouring Position", "Total QS Eiwdeck Panels" of the Etobicoke brochure and the entire TITAN brochure). It would have been considered obvious to one of ordinary skill in the art to modify Etobicoke (Components of 20K Frame System) by including the drophead, ledger and joist as taught by either "Etobicoke Iron Works Limited Corporate Profile (see page with heading "Megashore Capacity Char", "Pouring Position", "Total QS Eiwdeck Panels" of the Etobicoke brochure) or "TITAN Formwork Systems" since such a modification allows for forming scaffolding used when pouring concrete and the like.

10. Claims 5, 13, 14, 15, 17, 21 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over brochure Doka Floor System in view of brochure Etobicoke Iron Works Limited Corporate Profile or "TITAN Formwork Systems" Doka Floor System discloses a non-symmetrical leg (see under heading "Innovative technology and few ... your site"). However, Doka lacks the specific drophead, ledger

Art Unit: 3673

and joist as called for in the claims. "Etobicoke Iron Works Limited Corporate Profile" and "TITAN Formwork Systems" both teach the specific drophead, ledger and joist as called for in the claims (see page with heading "Megashore Capacity Char", "Pouring Position", "Total QS Eiwdeck Panels" of the Etobicoke brochure and the entire TITAN brochure). It would have been considered obvious to one of ordinary skill in the art to modify Doka Floor System by including the drophead, ledger and joist as taught by either "Etobicoke Iron Works Limited Corporate Profile (see page with heading "Megashore Capacity Char", "Pouring Position", "Total QS Eiwdeck Panels" of the Etobicoke brochure) or "TITAN Formwork Systems" since such a modification allows for forming scaffolding used when pouring concrete and the like.

11. Claims 5, 13, 14, 15, 17, 21 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over brochure "TITAN Formwork Systems" in view of Etobicoke Iron Works Limited Corporate Profile or brochure Doka Floor System or Johnston '708. TiTan Formwork Systems discloses the invention substantially as claimed. However, it is silent about its leg being non-symmetrical. Etobicoke Iron Works Limited Corporate Profile brochure, Doka Floor System brochure and Johnston '708 all teach non-symmetrical legs. It would have been considered obvious to one of ordinary skill in the art to modify "Titan Formwork Systems" by substituting the leg of either Etobicoke Iron Works Limited Corporate Profile or brochure Doka Floor System or Johnston '708 for the leg disclosed by "Titan Formwork Systems" since such a modification allows for easier attachment of the framing structures.



***Response to Arguments***

12. Applicant's argument with respect to Johnston not having the specific drophead and ledger as called for in the claims is moot in view of the new grounds of rejection.

13. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

As specifically set forth in the Etobicoke brochure they are non-symmetric legs, dropheads, ledger and joists as called for in the claims. Since these are all components use in forming a post shore decking system it is well within the skill of an skilled artisan to use specific combinations of legs, drophead, ledgers and joists to suit the intended use. This is clearly not impermissible hindsight.

***Allowable Subject Matter***

14. Claims 1-4, 28 are allowed.

***Conclusion***

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sunil Singh whose telephone number is (703) 308-

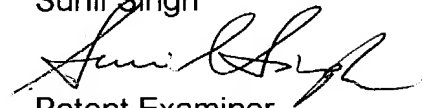
Art Unit: 3673

4024. The examiner can normally be reached on Monday through Friday 8:30 AM-5:00 PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford can be reached on (703) 308-2978. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-2168.

Sunil Singh



Patent Examiner  
Art Unit 3673

SS   
May 27, 2004

